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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 7234

13 **TONY VAN LE**
14 **1141 Melia Place**
Placentia, CA 92870

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Pharmacist License No. RPH 59721**

16 Respondent.

17
18 **FINDINGS OF FACT**

19 1. On or about May 18, 2022, Complainant Anne Sodergren, in her official capacity as
20 the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed
21 Accusation No. 7234 against Tony Van Le (Respondent). (Accusation attached as Exhibit A.)

22 2. On or about July 5, 2007, the Board issued Pharmacist License No. RPH 59721 to
23 Respondent. The Pharmacist License was in full force and effect at all times relevant to the
24 charges brought in Accusation No. 7234 and will expire on August 31, 2022, unless renewed.

25 3. On or about June 8, 2022, Respondent was served by Certified and First Class Mail
26 copies of the Accusation No. 7234, Statement to Respondent, Notice of Defense, Request for
27 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

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1 his address of record which, pursuant to Business and Professions Code section 4100, is required
2 to be reported and maintained with the Board. Respondent's address of record was and is:
3 1141 Melia Place, Placentia, CA 92870.

4 4. The aforementioned documents were also served by Certified and First Class Mail to
5 the following alternate known address for Respondent: 3901 Klein Blvd., Lompoc, CA 93436.

6 5. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c), and/or Business and Professions Code section
8 124.

9 6. Government Code section 11506, subdivision (c), states:

10 The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense . . . and the notice shall be deemed a specific denial of all
12 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
13 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
14 discretion may nevertheless grant a hearing.

15 7. The Board takes official notice of its records and the fact that Respondent failed to
16 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
17 waived his right to a hearing on the merits of Accusation No. 7234.

18 8. California Government Code section 11520, subdivision (a), states:

19 If the respondent either fails to file a notice of defense . . . or to appear at the
20 hearing, the agency may take action based upon the respondent's express admissions
21 or upon other evidence and affidavits may be used as evidence without any notice to
22 respondent

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
26 finds that the charges and allegations in Accusation No. 7234, are separately and severally, found
27 to be true and correct by clear and convincing evidence.

28 10. The Board finds that the actual costs for Investigation and Enforcement are \$4,005.00
as of July 18, 2022.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Tony Van Le has subjected his Pharmacist License No. RPH 59721 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Accusation, which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Respondent has subjected his license to disciplinary action under Code sections 490 and 4301, subdivision (l), because on or about October 4, 2021, as more fully set forth in the Accusation, Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensed pharmacist.

b. Respondent has subjected his license to disciplinary action under Code section 4301, subdivision (f), for unprofessional conduct, because Respondent engaged in acts of moral turpitude, as more fully set forth in the Accusation.

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ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 59721, issued to Respondent Tony Van Le, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on October 19, 2022.

It is so ORDERED on September 19, 2022.



Seung W. Oh, Pharm.D.
Board President
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

83507137.DOCX
SD2022800148

Attachment:
Exhibit A: Accusation No. 7234

Exhibit A

Accusation No. 7234

(TONY VAN LE)

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Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 7234

14 **TONY VAN LE, A.K.A. THU VAN LE**
15 **1141 Melia Place**
Placentia, CA 92870

ACCUSATION

16 **Pharmacist License No. RPH 59721**

17 Respondent.

18
19 **PARTIES**

20 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

22 2. On or about July 5, 2007, the Board issued Pharmacist License Number RPH 59721
23 to Tony Van Le (Respondent). The Pharmacist License was in full force and effect at all times
24 relevant to the charges brought herein and will expire on August 31, 2022, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Code section 4300, subdivision (a), states, “Every license issued may be suspended or
2 revoked.”

3 5. Code section 4300.1 states:

4 The expiration, cancellation, forfeiture, or suspension of a board-issued license
5 by operation of law or by order or decision of the board or a court of law, the placement
6 of a license on a retired status, or the voluntary surrender of a license by a licensee shall
7 not deprive the board of jurisdiction to commence or proceed with any investigation
8 of, or action or disciplinary proceeding against, the licensee or to render a decision
9 suspending or revoking the license.

8 **STATUTORY PROVISIONS**

9 6. Code section 482 states:

10 (a) Each board under this code shall develop criteria to evaluate the rehabilitation
11 of a person when doing either of the following:

12 (1) Considering the denial of a license by the board under Section 480.

13 (2) Considering suspension or revocation of a license under Section 490.

14 (b) Each board shall consider whether an applicant or licensee has made a
15 showing of rehabilitation if either of the following are met:

16 (1) The applicant or licensee has completed the criminal sentence at issue
17 without a violation of parole or probation.

18 (2) The board, applying its criteria for rehabilitation, finds that the applicant
19 is rehabilitated.

20

21 (d) This section shall become operative on July 1, 2020.

22 7. Code section 490 states:

23 (a) In addition to any other action that a board is permitted to take against a
24 licensee, a board may suspend or revoke a license on the ground that the licensee has
25 been convicted of a crime, if the crime is substantially related to the qualifications,
26 functions, or duties of the business or profession for which the license was issued.

27 (b) Notwithstanding any other provision of law, a board may exercise any
28 authority to discipline a licensee for conviction of a crime that is independent of the
authority granted under subdivision (a) only if the crime is substantially related to the
qualifications, functions, or duties of the business or profession for which the licensee’s
license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of
guilty or a conviction following a plea of nolo contendere. An action that a board is
permitted to take following the establishment of a conviction may be taken when the

1 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
2 or when an order granting probation is made suspending the imposition of sentence,
irrespective of a subsequent order under Section 1203.4 of the Penal Code.

3

4 8. Code section 493 states:

5 (a) Notwithstanding any other law, in a proceeding conducted by a board within
6 the department pursuant to law to deny an application for a license or to suspend or
7 revoke a license or otherwise take disciplinary action against a person who holds a
license, upon the ground that the applicant or the licensee has been convicted of a crime
8 substantially related to the qualifications, functions, and duties of the licensee in
question, the record of conviction of the crime shall be conclusive evidence of the fact
that the conviction occurred, but only of that fact.

9 (b) (1) Criteria for determining whether a crime is substantially related to the
10 qualifications, functions, or duties of the business or profession the board regulates
shall include all of the following:

11 (A) The nature and gravity of the offense.

12 (B) The number of years elapsed since the date of the offense.

13 (C) The nature and duties of the profession.

14 (2) A board shall not categorically bar an applicant based solely on the type
15 of conviction without considering evidence of rehabilitation.

16 (c) As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

17

18 9. Code section 4301 states:

19 The board shall take action against any holder of a license who is guilty of
20 unprofessional conduct or whose license has been issued by mistake. Unprofessional
conduct includes, but is not limited to, any of the following:

21 ...

22 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
23 deceit, or corruption, whether the act is committed in the course of relations as a
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

24 ...

25 (I) The conviction of a crime substantially related to the qualifications, functions,
26 and duties of a licensee under this chapter. The record of conviction of a violation of
Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
27 regulating controlled substances or of a violation of the statutes of this state regulating
controlled substances or dangerous drugs shall be conclusive evidence of
28 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
evidence only of the fact that the conviction occurred. The board may inquire into the

1 circumstances surrounding the commission of the crime, in order to fix the degree of
2 discipline or, in the case of a conviction not involving controlled substances or
3 dangerous drugs, to determine if the conviction is of an offense substantially related to
4 the qualifications, functions, and duties of a licensee under this chapter. A plea or
5 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
6 conviction within the meaning of this provision. The board may take action when the
time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
or when an order granting probation is made suspending the imposition of sentence,
irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the
person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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8 **REGULATORY PROVISIONS**

9 10. California Code of Regulations, title 16, section 1769, subdivision (c), states:

10 Suspension or revocation of a license.

11 When considering the suspension or revocation of a facility or a personal license
12 on the ground that the licensee has been convicted of a crime, the board will consider
13 whether the licensee made a showing of rehabilitation and is presently fit for a license,
14 if the licensee completed the criminal sentence at issue without a violation of parole or
15 probation. In making this determination, the board will consider the criteria in
16 subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal
sentence at issue without a violation of parole or probation or the board determines that
the licensee did not make the showing of rehabilitation based on the criteria in
subdivisions (b)(1)(A) through (E), the board will apply the following criteria in
evaluating the licensee's rehabilitation:

17 (1) Nature and gravity of the act(s) or offenses.

18 (2) Total criminal record.

19 (3) The time that has elapsed since commission of the act(s) or offenses.

20 (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

21 (5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.

22 (6) Evidence, if any, of rehabilitation submitted by the licensee, including as
23 provided in the board's Disciplinary Guidelines, identified in section 1760.

24 11. California Code of Regulations, title 16, section 1770, states:

25 (a) For the purpose of denial, suspension, or revocation of a personal or facility
26 license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the
27 Business and Professions Code, a crime, professional misconduct, or act shall be
28 considered substantially related to the qualifications, functions or duties of the practice,
profession, or occupation that may be performed under the license type sought or held
if to a substantial degree it evidences present or potential unfitness of an applicant or

licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board will consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the practice, profession, or occupation that may be performed under the license type sought or held.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, those which:

(1) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, governing the practice of pharmacy.

(2) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or any law of this state, or any other jurisdiction, relating to controlled substances or dangerous drugs.

(3) Violate or attempt to violate, directly or indirectly, or to aid, abet or conspire to violate, any provision of law of this state, or any other jurisdiction, relating to government provided or government supported healthcare.

(4) Involve dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information.

(5) Involve a conviction for driving under the influence of drugs or alcohol.

COST RECOVERY

12. Code section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

13. At all relevant times, Respondent was licensed as a pharmacist in Southern California. Respondent is the owner of TC Medical Pharmacy ("TCMP") located in Corona, California; a co-operator and silent owner of Mars Hill Pharmacy ("MHP") located in North Carolina; and the beneficial owner of numerous bank and financial institution accounts, including

1 accounts held or operated by co-defendants involved in the criminal matter, as more fully set
2 forth, below.

3 **United States District Court, Central District, Case No. 8:18-cr-00119-RGK-1**

4 14. On or about October 4, 2021, in a criminal proceeding entitled *United States of*
5 *America v. Thu Van Le, aka "Tony Le," et al.*, United States District Court, Southern District of
6 California, Case Number 8:18-cr-00119-RGK-1, Respondent pled guilty and was convicted of
7 Health Care Fraud (18 U.S.C. § 1347), and Aiding and Abetting and Causing an Act to be Done
8 (18 U.S.C. § 2). Additional counts of Conspiracy to Commit Health Care Fraud (18 U.S.C. §
9 1349) Illegal Remunerations in Connection with Federal Health Care Programs (42 U.S.C. §
10 1320a-7(b)), and Money Laundering (18 U.S.C. § 1956(a)(1)(B)(i)) were dismissed pursuant to a
11 plea agreement. Respondent was sentenced to 70 months in prison and ordered to pay a \$100
12 court assessment, and restitution in the amount of \$11,751,247.00. Upon release from prison,
13 Respondent is subject to supervised released for three years, under certain terms and conditions.

14 *Factual Basis*

15 15. Beginning on or about a date unknown, but at least as early as March 2015, and
16 continuing to in or about December 2016, Respondent, together with others, executed a wide-
17 ranging scheme to defraud and obtain money from TRICARE and the Amtrak Union Benefits
18 Plan (AMPLAN), in connection with the delivery of and payment for health care benefits.

19 16. In order to carry out the scheme, Respondent admitted to the following conduct as
20 alleged in the Indictment:

21 a. Respondent caused agreements to be prepared and executed between TCMP
22 and certain marketers, to pay kickbacks for the referral of compounded medication
23 prescriptions.

24 b. Respondent caused compounded medications prescription forms to be prepared
25 and distributed to marketers that identified multiple compounded medications
26 formulations, which were included on the forms and selected by the marketers because the
27 provided the maximum possible TRICARE and AMPLAN reimbursements rather than
28 based on individual patient needs and medical necessity.

1 c. After obtaining beneficiaries' personal and insurance information, marketers
2 used the form provided by Respondent to designate prescriptions to beneficiaries that such
3 marketers selected as appropriate, despite having no health care training, and which would
4 maximize TRICARE reimbursements and, in turn, the amount of kickbacks they would
5 receive under their agreement with TCMP. Marketers then caused the authorized
6 prescriptions to be sent to TCMP and MHP for fulfillment.

7 d. After obtaining beneficiaries' personal and AMPLAN insurance information,
8 marketers used the information to prepare compounded forms that would then be submitted
9 to Respondent in exchange for a kickback that Respondent would pay from the AMPLAN
10 claims reimbursements.

11 e. Respondent prepared and caused to be prepared compounded medications
12 prescriptions and caused claims to be submitted to TRICARE and AMPLAN for
13 reimbursement for the preparation of such prescriptions.

14 f. Respondent knowingly submitted false and fraudulent claims for
15 reimbursement for prescriptions to TRICARE and AMPLAN.

16 g. Respondent directed co-defendants and/or others to create nominee bank
17 accounts, and arranged for proceeds from TRICARE and AMPLAN claims
18 reimbursements to be deposited into these accounts. Respondent then directed and caused
19 the transfer of these funds for the purpose of concealing and disguising the source of the
20 funds.

21 h. Respondent concealed and disguised the illegal kickbacks that he paid to
22 marketers by identifying the payments as "loans" or "bonuses."

23 i. Suspecting that TRICARE would investigate their fraudulent claims for
24 reimbursement, Respondent sent releases to physicians to conceal and cover-up that TCMP
25 and MHP had wrongfully filled and sought reimbursement for filling such prescriptions.

26 17. Throughout the course of the scheme, Respondent, along with others, through his
27 companies TCMP and MHP, unlawfully submitted approximately 848 claims and fraudulently
28 billed insurers a total of approximately \$41,910,176.00.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(October 4, 2021 Criminal Convictions for Health Care Fraud and Aiding and Abetting)**

3 18. Respondent has subjected his license to disciplinary action under Code sections 490
4 and 4301, subdivision (l), because on or about October 4, 2021, as more fully set forth in
5 paragraphs 13 through 17, above, incorporated herein by this reference, Respondent was
6 convicted of crimes that are substantially related to the qualifications, functions, and duties of a
7 licensed pharmacist.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Commission of Acts Involving Moral Turpitude)**

10 19. Respondent has subjected his license to disciplinary action under Code section 4301,
11 subdivision (f), for unprofessional conduct, because Respondent engaged in acts of moral
12 turpitude, as more fully set forth in paragraphs 13 through 17, above, incorporated herein by this
13 reference.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Pharmacy issue a decision:

17 1. Revoking or suspending Pharmacist License Number RPH 59721, issued to
18 Respondent Tony Van Le;

19 2. Ordering Respondent Tony Van Le to pay the Board of Pharmacy the reasonable
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 125.3; and,

22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 5/18/2022

Signature on File

25 ANNE SODERGREN
26 Executive Officer
27 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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